

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0187 CAF**

**PHILLIP D. GRIFFITH,
Complainant**

v.

**GENERAL MOTORS LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Phillip D. Griffith (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2014 Chevrolet Silverado. Complainant asserts that the vehicle is defective since the vehicle's engine has been replaced three (3) times since he purchased it. General Motors LLC (Respondent) argued that the vehicle has been repaired, does not have any defects, and that no relief is warranted. The hearings examiner concludes that the vehicle has been repaired, does not have an existing warrantable defect, and Complainant is not eligible for relief.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened and the record was closed on June 16, 2016, in Corpus Christi, Texas, before Hearings Examiner Edward Sandoval. Complainant, Phillip D. Griffith, represented himself at the hearing. Respondent was represented by Kevin Phillips, Business Resource Manager. Kevin Brown, Field Service Engineer, and Michael Duffin, Allways Chevrolet's Service Manager, testified for Respondent. John Anastos, District Manager, was present for Respondent as an observer.

II. DISCUSSION

A. Applicable Law

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.¹ Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.² Third, the manufacturer has been given a reasonable number of attempts to

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

repair or correct the defect or condition.³ Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.⁴ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁵

In addition to the five conditions, a rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times and: (1) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt.⁶

B. Complainant's Evidence and Arguments

Complainant purchased a new 2014 Chevrolet Silverado from Allways Chevrolet in Mathis, Texas (Allways) on February 20, 2015, with mileage of 5,002 at the time of delivery.^{7,8} On the date of hearing the vehicle's mileage was 16,190. At this time, Respondent's warranty coverage for the vehicle remains in place, with bumper-to-bumper coverage for three (3) years or 36,000 miles, whichever comes first. In addition, Respondent's powertrain warranty provides coverage for the vehicle's powertrain for five (5) years or 100,000 miles.

Complainant testified that he has experienced numerous engine problems with the vehicle. The vehicle has been in and out of the mechanic's shop since it was purchased. In addition, Respondent has put three engines in the vehicle in an attempt to repair it. Complainant has lost confidence in the vehicle and wants to have Respondent buy it back from him.

Complainant's wife is the primary driver of the vehicle. In June of 2015, she started hearing a loud popping noise when putting the vehicle's transmission in reverse. Complainant took the vehicle to Allways for repair on June 29, 2015. Allways' service technician verified that the vehicle had a vibration when it was being driven and determined that the rear U joints were tight

³ *Id.*

⁴ Tex. Occ. Code § 2301.606(c)(1).

⁵ Tex. Occ. Code § 2301.606(c)(2).

⁶ Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. However, § 2301.605(a)(2) applies only to a nonconformity that creates a serious safety hazard, and § 2301.605(a)(3) requires that the vehicle be out of service for repair for a total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner.

⁷ Complainant Ex. 1, Motor Vehicle Retail Installment Sales Contract dated February 20, 2015.

⁸ Complainant Ex. 3, Odometer Disclosure Statement dated February 20, 2015.

and couldn't move.⁹ The technician replaced the joints and test drove the vehicle.¹⁰ He determined that the noise and vibration were corrected by his repair.¹¹ The vehicle's mileage on this occasion was 13,072.¹² The vehicle was in Allways' possession for two (2) days during this repair. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

The vehicle drove fine after the U joints were replaced. However, Complainant began to hear a noise from the rear of the vehicle. He took the vehicle to Allways on July 21, 2015, in order to have the issue addressed. Allways' technician verified hearing a noise from the rear of the vehicle.¹³ The technician lubricated the vehicle's leaf springs in order to correct the issue.¹⁴ The vehicle's mileage on this occasion was 13,846.¹⁵

Complainant testified that the noise went away after the leaf springs were lubricated. However, it returned about a week later. Complainant took the vehicle to Allways for repair on July 28, 2015. The technician verified the concern and determined that the leaf springs' bushings were causing the noise.¹⁶ As a result, the technician replaced the rear leaf springs.¹⁷ The vehicle was in the dealer's possession for three (3) days on this occasion. Complainant was provided with a loaner vehicle while his vehicle was being repaired. Complainant testified that he has not heard the noises from the rear of the vehicle since the repair was performed.

Complainant stated that about a month later, the vehicle's transmission and check engine lights illuminated and the engine started making a clanking noise. In addition, the vehicle overheated. Complainant took the vehicle to Allways for repair on August 25, 2015. Allways' service technician, after contacting Respondent's technical help line, performed a cylinder kill test on the vehicle and found that the noise stopped when one of the engine's cylinders (cylinder 3) was killed.¹⁸ The technician removed the cylinder heads from the engine and discovered frozen metal shavings and a sludge build up in the engine.¹⁹ Due to the damage to the engine, it was replaced.²⁰ The vehicle's mileage on this occasion was 14,899.²¹ The vehicle was in Allways' possession for about 23 days. Complainant was provided with a rental vehicle while his vehicle was being repaired.

⁹ Complainant Ex. 4, Repair Order dated June 29, 2015.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Complainant Ex. 5, Repair Order dated July 21, 2015.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Complainant Ex. 6, Repair Order dated July 28, 2015.

¹⁷ *Id.*

¹⁸ Complainant Ex. 7, Repair Order dated August 25, 2015.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

Complainant testified that in September of 2015, the vehicle's check engine light (CEL) illuminated. Complainant took the vehicle for repair to Allways on September 30, 2015. Allways' technician replaced the vehicle's engine control module (ECM) and applied dielectric grease to a pin connector in order to address the issue.²² The vehicle's mileage on this occasion was 14,899.²³ The vehicle was in Allways' possession for repair for approximately a month on this occasion. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

On November 3, 2015, Complainant had the vehicle towed to Allways because it had started making a noise from the engine compartment. Allways' technician found that the engine was low on oil. The technician could not find an oil leak nor any oil residue in the tail pipe.²⁴ The technician inspected the engine's spark plugs and determined that they had not been fouled with oil.²⁵ The technician did find that there was damage to the vehicle's cam shaft and the engine had several collapsed lifters.²⁶ As a result of the damage to the engine, it had to be replaced again. In addition, Complainant was advised to return the vehicle to Allways every 1000 miles for inspection to the engine.²⁷ The vehicle's mileage on this occasion was 15,049.²⁸ The vehicle was in Allways' possession for a month on this occasion. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant stated that in early January of 2016, the vehicle's engine overheated and began making a clanking noise. Complainant took the vehicle for repair to Allways on January 8, 2016. The technician verified the noise and inspected the vehicle.²⁹ One of Respondent's field service engineers (FSE), Kevin Brown, took a sample of the vehicle's oil for analysis.³⁰ The vehicle's engine, cooling hoses, radiator, vacuum pump, coolant reservoir, cooling fluids and oils were all replaced.³¹ In addition, all entries to the vehicle's cooling system, oil, and coolant were sealed.³² The vehicle's mileage on this occasion was 16,052.³³ The vehicle was in Allways' possession for over 60 days. Complainant was provided with a loaner vehicle for 43 days. He did not request an additional loaner for the entire period that his vehicle was being repaired.

²² Complainant Ex. 8, Repair Order dated September 30, 2015.

²³ *Id.*

²⁴ Complainant Ex. 9, Repair Order dated November 3, 2015.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Complainant Ex. 10, Repair Order dated January 8, 2016.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

On February 12, 2016, Complainant wrote a letter to Respondent advising them of his dissatisfaction with the vehicle.³⁴ Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on February 19, 2016.³⁵

Complainant testified that his father picked up the vehicle from Allways near the end of April of 2016. He stated that he has not driven the vehicle often since getting it back. He does start it periodically to keep the battery charged. Complainant does not want his wife driving the vehicle because he feels that it's not reliable. He has purchased another vehicle for his wife to drive.

During cross examination, Complainant testified that the clanking noise, the vehicle's U joint, and the squeaking noise from the leaf springs have all been addressed and are no longer an issue. The only concern at this point is whether the vehicle's engine is fully repaired.

Complainant also stated that he has not had any accidents in the vehicle. The tires are the original tires from when the vehicle was purchased. There are no dings or interior damage to the vehicle. He did add on camouflage paint to the exterior of the vehicle. He does not use the vehicle to tow anything.

Complainant stated that the vehicle's CEL light has not illuminated since September of 2015. The vehicle currently does not make any abnormal noises.

Complainant testified that when he purchased the vehicle, he traded in another vehicle in which he had a negative equity. Since the vehicle has had three engines replaced, Complainant stated that he has lost confidence in the vehicle and no longer wants it.

During rebuttal testimony, Complainant denied having tampered with the vehicle, its cooling system, or the engine oil. He denied putting a hole in a coolant hose.

C. Respondent's Evidence and Arguments

1. Michael Duffin's Testimony

Michael Duffin is Allways Chevrolet's service manager. He has 30 years' experience in the automotive industry. He has mostly worked with General Motors dealers over that period of time. He is a GM certified technician.

³⁴ Complainant Ex. 12, Letter to GM dated February 12, 2016.

³⁵ Complainant Ex. 11, Lemon Law Complaint dated February 19, 2016. Complainant signed and dated the complaint on February 13, 2016. However, the complaint was not received by the Texas Department of Motor Vehicles until February 19, 2016, which is the effective date of the complaint.

Mr. Duffin testified that Allways performed the first repair to the vehicle's engine on August 25, 2015. On this occasion, the service technician found frozen metal shavings in the engine. The engine had overheated which can damage an engine. The decision was made to replace the engine in order to repair the vehicle. Mr. Duffin stated that although this was a valid warranty repair, it was unusual to have this type of issue occur.

On September 30, 2015, Complainant returned the vehicle to Allways for repair. The vehicle's CEL had illuminated.³⁶ On this occasion, the vehicle's ECM was replaced and dielectric grease was applied to a pin connector.³⁷ The vehicle was returned to Complainant on October 27, 2015.³⁸

Mr. Duffin testified that five (5) days after the vehicle was returned to Complainant, he was back at Allways with another complaint about the vehicle's engine. This time there was a noise coming from the vehicle's engine compartment. The technician checked the vehicle's oil level and determined that it was low on oil. The technician installed four quarts of oil in the vehicle in order to bring the oil level up to the recommended level. Mr. Duffin stated that there was no evidence of an oil leak or that the vehicle was burning oil excessively. Mr. Duffin testified that he was suspicious about the problems with the vehicle's engines and that the cause of the problems was a mystery. The vehicle's engine was replaced again. The customer was asked to return the vehicle to Allways for inspection every 1,000 miles to try to determine what was causing the issues with the engine. In addition, the technician was advised to seal any area where oil could be removed from the vehicle.³⁹

Mr. Duffin further testified that the vehicle was returned to Allways for repair on January 8, 2016. At this time, the technician found a coolant hose appeared to have been punctured with a sharp object. Although Mr. Duffin felt that the damage to the vehicle's engine on this occasion was not due to a warrantable defect, Respondent paid for the repairs to the vehicle and covered the cost of the third engine under the terms of the vehicle's warranty.

Mr. Duffin testified that the vehicle was picked up by Complainant's father in late April of 2016. He has not seen the vehicle since it was picked up. The vehicle has not been returned to Allways for any other repairs.

³⁶ Respondent Ex. 4, Repair Order dated September 30, 2015.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Respondent Ex. 7, Email to Mustafa Al Jabari dated December 7, 2015.

2. Kevin Brown's Testimony

Kevin Brown, Field Service Engineer, has 17 to 18 years' experience working for Respondent. He has both Automotive Service Excellence (ASE) and GM master technician certifications. He is also a GM World Certified technician. He has been working for approximately four (4) years as a field service engineer for Respondent.

Mr. Brown testified that he was instructed to perform a final repair attempt on Complainant's vehicle. He inspected the vehicle on March 14, 2016, at Always. The vehicle's engine was disassembled when Mr. Brown arrived at the dealership, so he could not test drive the vehicle. Mr. Brown stated that he saw that the vehicle's oil pan contained a thick and viscous sludge which should not have been the case, since the engine had been replaced and new oil installed approximately a month before it was taken to Always on January 8, 2016. In Mr. Brown's opinion the oil looked contaminated. The oil was thick like syrup and had a sweet smell and flavor. Mr. Brown stated that he took a sample of the oil for analysis. The analysis revealed that the oil contained a high amount of water and other contaminants and metals.⁴⁰

Mr. Brown testified that he also inspected the engine's cylinder heads and found a "crystal type debris" collected there.⁴¹ In addition, he was shown a punctured coolant by-pass hose.⁴² It appeared that a sharp object had punctured the hose.⁴³ As a result of the hole, the vehicle's coolant was able to leak out, causing the engine to overheat.⁴⁴ In addition, Mr. Brown checked the engine for signs of excessive oil consumption and was unable to find any such signs.⁴⁵

Mr. Brown testified that he felt that the vehicle's engine had been tampered with and that the tampering was causing the engine issues. Mr. Brown also stated that if an engine or other vehicle component is tampered with, any repairs for the issue would not be covered under warranty.

D. Analysis

Under the Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet the presumption that the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainant is

⁴⁰ Respondent Ex. 13, Vehicle Inspection report undated, p. 2.

⁴¹ *Id.*, p. 1.

⁴² *Id.*, p. 2.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

required to serve written notice of the defect or nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect or condition, Complainant is entitled to have the vehicle repurchased or replaced.

Complainant's Lemon Law complaint indicated that he had three (3) issues with the vehicle: a clanking noise when putting the vehicle's transmission in to gear, a squeaking noise from the rear of the vehicle, and a problem with the vehicle's engine which has been replaced three (3) times. Complainant indicated at the time of hearing that the first two issues (the clanking noise and the squeaking noise) have been repaired and are no longer issues that need to be addressed in this decision. So, the only issue before the hearings examiner has to do with the vehicle's engine.

Complainant purchased the vehicle on February 20, 2015, and presented the vehicle to an authorized dealer of Respondent for repair due to problems with the engine on the following dates: August 25, 2015; September 30, 2015; November 3, 2015; and January 8, 2016. The vehicle was repaired in January of 2016 and Complainant indicated that he has not had any issues with the engine since he had his father pick up the vehicle in late April of 2016.

Occupations Code § 2301.603 provides that "a manufacturer, converter, or distributor shall make repairs necessary to conform a new motor vehicle to an applicable manufacturer's converter's or distributor's express warranty." Relief under the Lemon Law can only be granted if the manufacturer of a vehicle has been unable to conform a vehicle to the manufacturer's warranty. If a vehicle has been repaired then no relief can be possible. A loss of confidence in the vehicle when a defect has been cured does not warrant relief under the Lemon Law. The Lemon Law requires that in order for a vehicle to be determined to be a "lemon" the "nonconformity continues to exist" after the manufacturer has made repeated repair attempts.⁴⁶ In the present case, the evidence reveals that the vehicle has been fully repaired and that it currently conforms to the manufacturer's warranty. Therefore, the hearings examiner finds that there is no defect with the vehicle that has not been repaired and, as such, repurchase or replacement relief for Complainant is not warranted.

Respondent's express warranty applicable to Complainant's vehicle provides bumper-to-bumper coverage for three (3) years or 36,000 miles whichever comes first. In addition, the powertrain warranty provides coverage for five (5) years or 100,000 miles. On the date of hearing, the vehicle's mileage was 16,190 and it remains under the warranties. As such, the Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranties.

⁴⁶ Tex. Occ. Code § 2301.605.

Complainant's request for repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. Phillip D. Griffith (Complainant) purchased a new 2014 Chevrolet Silverado on February 20, 2015, from Allways Chevrolet in Mathis, Texas, with mileage of 5002 at the time of delivery.
2. The manufacturer of the vehicle, General Motors LLC (Respondent), issued a bumper-to-bumper warranty for three (3) years or 36,000 miles, whichever occurs first and a separate powertrain warranty for five (5) years or 100,000 miles.
3. The vehicle's mileage on the date of hearing was 16,190.
4. At the time of hearing the vehicle was still under warranty.
5. Respondent has replaced the vehicle's engine three times over the course of Complainant's ownership of the vehicle.
6. Complainant took the vehicle for repair to Allways on the following dates:
 - a. June 29, 2015, at 13,072 miles;
 - b. July 21, 2015, at 13,846 miles;
 - c. July 28, 2015, at 14,152 miles;
 - d. August 25, 2015, 14,785 miles;
 - e. September 30, 2015, at 14,899 miles;
 - f. November 3, 2015, at 15,049 miles; and
 - g. January 8, 2016, at 16,052 miles.
7. On June 29, 2015, Allways' service technician replaced the vehicle's rear U joint in order to repair the issue of Complainant hearing a clunking noise when the vehicle's transmission was put in to gear.
8. On July 21, 2015, Allways' technician lubricated the vehicle's rear spring area because there was a squeaking noise coming from the rear of the vehicle.
9. On July 28, 2015, Allways' service technician replaced the vehicle's rear leaf springs because the squeaking noise had returned.

10. After July 28, 2015, Complainant did not hear any more noises from the rear of the vehicle.
11. On August 25, 2015, Always' service technician replaced the vehicle's engine in order to conform the vehicle to its warranty.
12. On September 30, 2015, Always' technician replaced the vehicle's engine control module (ECM) and applied dielectric grease to a pin connector in order to address a problem with the vehicle dying and the check engine light (CEL) illuminating.
13. On November 3, 2015, Always' service technician replaced the vehicle's engine a second time because it had been damaged due to low oil levels.
14. On January 8, 2016, Always' service technician replaced the vehicle's engine a third time because the vehicle had overheated and because the vehicle's oil had been contaminated both of which damaged the engine.
15. The vehicle has been repaired and the vehicle is no longer making any unusual noises and the engine has not had any other problems.
16. On February 19, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
17. On April 15, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.
18. The hearing in this case convened and the record was closed on June 16, 2016, in Corpus Christi, Texas, before Hearings Examiner Edward Sandoval. Complainant, Phillip D. Griffith, represented himself at the hearing. Respondent was represented by Kevin Phillips, Business Resource Manager. Kevin Brown, Field Service Engineer, and Michael Duffin, Always Chevrolet's Service Manager, testified for Respondent. John Anastos, District Manager, was present for Respondent as an observer.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant failed to prove by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.
8. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED June 28, 2016



**EDWARD SANDOVAL
CHIEF HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES**